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Wayne Gerald Morley

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,563	Applicant(s) MORLEY ET AL.	
	Examiner JYOTI CHAWLA	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/13/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendment to claims filed February 22, 2007 has been entered. Claims 1-10 are pending and examined.

Claim Objections

Claims 1-10 are objected to because of the following informalities:

Claims contain words, such as, "flavoured" or "flavouring" that need to be corrected to "flavored" or "flavoring" to conform to US spelling acceptability standard. Appropriate correction is required.

Claim Rejections - 35 USC § 112 (First Paragraph)

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 7 as recited states "A kit according to claim 1, wherein the total fat content of said cooking composition and the salad dressing combined is in the range of from 5 to about 50%."

Claim 7 is a dependent claim and depends from claim 1. The claim as recited is not enabled because one of skill in the art will not be able to make and use the invention as recited. For example, if the cooking paste and dressing are added in the relative proportions (1:20 to 2:1) as recited in claim 1, the total fat content of the paste and dressing combined would not fall in the range as recited. To illustrate a few scenarios have been worked to show the total fat content of the combination

	Paste	Dressing
Fat content	1%	0%
Proportion (a)	1	20

Total fat content of combination	$[1+20(0)]/21= \mathbf{0.5\%}$	
Fat content	40%	60%
Proportion (b)	1	20
Total fat content of combination	$[1(45) + 20(60)]/21= \mathbf{59\%}$	
Fat content	1%	0%
Proportion (a)	2	1
Total fat content of combination	$[2(1) + 1(0)]/3= \mathbf{0.67\%}$	
Fat content	40%	60%
Proportion (b)	2	1
Total fat content of combination	$[2(40) + 1(60)]/3= \mathbf{47\%}$	

Thus as demonstrated that the minimal fat level is about 0.5% and the maximum is 59%, both of which are outside the combined fat content of claim 7 of 5-50% combined fat by weight. Thus one of skill in the art would not necessarily be able to make the invention within the fat content specified by using the proportions of individual components as recited in the claim. The specification also discloses the same proportions as recited in the claim. Thus the specification and the claim as recited do not enable one of skill to make and use the invention as recited in claim 7.

Claim Rejections - 35 USC § 112 (second paragraph)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 as recited is indefinite for the recitation of "A kit for preparing salads comprising at least one ingredient (I) which is cooked and at least one fruit, vegetable or cereal product, wherein the kit comprises" as it is unclear as to what is included in the kit, i.e.,

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does the kit comprise of a cooked ingredient and one fruit/vegetable/cereal product or does the kit comprise of the flavored cooking paste and a dressing or some other things. It is unclear as to what part of the kit as recited is and what part of the recited claim describes the potential use of the kit. Thus, as recited "A kit for preparing salads *comprising* at least one ingredient which is cooked and at least one fruit, vegetable or cereal product, wherein the kit *comprises* (a)...(b)...thereof". Thus the claim as recited is unclear as to what is included in the kit, i.e., does the kit comprise of a cooked ingredient and one fruit/vegetable/cereal product along with the flavored cooking paste and a dressing along with other things as the claim uses the open ended term *comprises*. Thus it is still unclear as to what is included in the kit as recited and what the kit can be used for. Correction is required.

Regarding claims 1-10, the recitation of "(I)" in parenthesis renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The parenthesis and the letter "I" or Roman numeral I as recited is unclear, as it is not clearly stated as to what I is and whether or not it is a part of the kit or just an explanation of the intended use of the kit. Correction is required.

Claims 1-10 are also indefinite for the recitation of "A kit...comprising at least one ingredient (I) which is cooked" (Claim 1) and "A process of preparing salad comprising at least one ingredient which is cooked" (claim 10) however, the claim as recited is indefinite because of the recitation of "said ingredient is cooked in the flavored cooking composition". As recited, claims 1 and 10 are indefinite because either "at least one ingredient" as recited is *either cooked* as included in the kit or used to make the salad in claim 10 OR "at least one ingredient" is *uncooked*, where the kit includes an uncooked ingredient and a flavored cooking paste as separate components of the kit which are used together to cook the "at least one ingredient" as recited in claims 1-10. Thus, as recited it is unclear whether the said ingredient is cooked or uncooked prior to its addition to the flavored composition. Alternatively if the ingredient is cooked in the flavored paste to start with, then it is unclear whether the flavored paste present as part

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of the kit is in addition to the paste present with the cooked ingredient or does the paste along with the cooked ingredient form a combined part of the kit. Correction and/or clarification is required. For the purposes of expediting the prosecution a salad kit with cooked ingredient would be considered relevant for the purposes of prior art comparison.

Claim 7 is indefinite for the recitation of “the total fat content of the cooking paste and the dressing combined is in the range of from 5 to 50% wt”. It is unclear as to how the proportion of total fat is being determined, is it the combination of the sauce and the dressing in its entirety or is it part of the sauce being combined with part of the dressing or some other combination of the sauce and dressing or is it the proportion of the total fat content of the food prepared using the kit. Clarification and/or correction is required.

Claim 7 is also indefinite because the individual fat content of the cooking paste and dressing as recited when added in the relative proportion as recited in the independent claim 1, the total combined fat content does not fall in the range recited as the total fat content of the two components as recited in claim 7. Correction is required.

Note: See the details in the 112 First paragraph rejection above.

Terms “for preparing”, “for cooking” as recited in claim 1 and additionally “for contacting” as recited in claim 10 is being considered to mean suitable for preparing, suitable for cooking and suitable for contacting for the purposes of examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

A) Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson (US 2001/0043972) in view of the combination of Errass et al (US 4497803), Bams et al (US 4650690).

Regarding claim1, Tomlinson teaches of an individual portion sized food container system for packaged food portions, such as salads, vegetables, fruits, cereals and meats. The reference teaches of foods that desirably need the addition of various types of salad dressings, sauces gravies, condiments and other liquids (Page 1, paragraphs [0003 to 0009]). Thus the reference teaches of an individual sized kit or system for salad as instantly claimed. Tomlinson teaches of cheese, pasta sauce, ketchup, barbeque sauce, gravies, etc., (Page 1, paragraph [0009]), thus the reference teaches of the flavored cooking composition as instantly claimed. Tomlinson also teaches of salad dressing, mayonnaise, yogurt, cream etc., (Page 1, paragraph [0009 and 0053-0055]) as instantly claimed.

The reference is silent as to the fat content of the sauce and the salad dressing as instantly claimed, however, sauces, mayonnaise and salad dressings are generally emulsions. Further, sauces and pastes and salad dressings with variable fat content, such as, low-fat, no-fat or fat-free etc., were known in the art at the time of the invention. Therefore, it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to add a sauce and/or dressing with the salad based on the desired, flavor, recipe, thickness, fat content, nutritional value or calorie content of the salad. One of ordinary skill would have been motivated to do so in order

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to enhance the appeal of the packaged salad or food article to the intended clientele. Further, the combination of low fat/low calorie cooking composition and salad dressing does not provide any unexpected advantage and thus does not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary.

Regarding claims 1 and 5, Tomlinson teaches of salad dressing, mayonnaise and sauces. Tomlinson is silent about the emulsion being oil-in water with fat content in the range of 10-40% by weight as instantly claimed. However, oil-in-water emulsion salad dressings were known at the time of the invention and salad dressings and sauces are oil-in water emulsions as evidenced by Errass. Errass teaches of oil-in water emulsions (Abstract and Column 1, lines 5-10 and Column 2, lines 40-50 and claims) as instantly claimed. Errass teaches of dressings that are oil-in-water emulsions and also have the fat content ranging from 10-50% (Table, Column 2). Thus sauces and dressings as oil-in-water emulsions with fat content on the range recited by the applicant were known at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the kit as taught by Tomlinson and include a salad dressing with flavor and fat content in the desired range of 10-50% as taught by Errass in order to make the salad having a dressing that has the desired fat content, calorie value and satiety value along with smoothness and creaminess to the final product.

Regarding claims 1, 3-4, Tomlinson teaches of pastas with sauce, where the pasta is a cooked product which is further cooked in pasta sauce, i.e., a cooking composition as recited. Tomlinson also teaches of cheese and other cooking sauces or pastes but is silent as to the fat content of the cooking compositions. Bams et al, hereinafter Bams, teaches of water-in-oil-in-water emulsions that make cooking sauces etc. Bams teaches of sauces with 10-80% of oil as instantly claimed. If the fat content of the cooking composition as taught by Bams is 10-80%, then the rest of the composition comprises of flavoring agents, which would be 20-80%, which includes the recited range for claims

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4 and 10. Thus Bams teaches that sauces or cooking compositions with the fat content in the recited range and relative proportions of hardened fats and oils were known at the time of the invention. To select a sauce based on the fat/calorie content and based on the flavor/taste would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention. Therefore, one of ordinary skill would have been motivated to modify Tomlinson's kit and include a sauce with fat content in the range of 10% and up to 80% as taught by Bams in order to make the salad/meal kit as taught by Tomlinson more filling and substantial and also in order to provide the satiety value of a meal to the consumer. Further, inclusion of a cooking composition having a certain amount of fat ratio would not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary.

Regarding the proportion of hardened fats as recited in claim 2, Bams teaches of partially hydrogenated fats, triglyceride esters of soy, corn, sunflower, peanut oils, which fall in the category of hardened oils as instantly claimed. Regarding the amount hydrogenated or hardened fat as recited in claim 2, Bams teaches of soy bean oil in Examples III to VIII (Columns 3-5) and mustard oil in Example III, and does not teach any hydrogenated or hardened fats. Thus, Bams teaches of 0% hardened fats in the Examples, which is less than 5%, as instantly claimed. Thus Bams teaches that sauces or cooking compositions with the fat content in the recited range and relative proportions of hardened fats and oils were known at the time of the invention. Further, the choice to include a small amount of hardened or hydrogenated fat to in the sauce would also have been a matter of preference for one of ordinary skill in the art at the time of the invention. One of ordinary skill at the time of the invention would have been motivated to choose the types of fats added to the sauce or food composition at least based on the availability, cost and ease of procurement and ease of use of the type of fat(s) or oils for making the sauce or cooking composition.

Regarding claim 6, Tomlinson is silent about the weight ratio of the cooking composition to dressing is in the range of from 2:1 to 1:300 as instantly claimed. However, addition

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of cooking sauce and dressing in variable amount was known in the art at the time of the invention based on the desired flavor and consistency in the finished product. Thus to include sauce and dressing in a kit in an optimal amount would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention, e.g., to include more of cooking sauce and less dressing if the salad has more meat or vegetables that are cooked with the sauce or to include a greater amount of dressing if the salad kit includes more of the salad leaves and raw vegetables, would have been a matter of routine determination for one of ordinary skill at the time of the invention. Therefore, it would be obvious to one of ordinary skill to modify the kit as taught by Tomlinson in order to accommodate the desire of the consumer. One would have been further motivated to modify the relative amounts of sauce and dressing in order to customize the kits according to the relative amounts of cooked vs. non-cooked foods in the kit. Further, inclusion of a specific proportion of salad dressing and sauce or paste to the packaged food would not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary.

Regarding claim 7, Tomlinson is silent about the fat content of the combined pastes. However, Tomlinson as modified by Errass and Bams teaches (claims 1,3,5) that cooking pastes/compositions and salad dressings with fat content in the recited range of the applicant were known at the time of the invention (see rejection of claims 1, 3, 5 above). Also it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to combine a cooking composition and salad dressing in appropriate amounts in such a way that the combined fat content of the finished salad product falls in a desired range. Therefore, it would be obvious to one of ordinary skill to modify the kit as taught by Tomlinson, based on the teachings from Erras and Bams, and include cooking composition and salad dressing with combined fat content in order to accommodate the desire of the consumer. One would have been further motivated to modify the relative amounts of sauce and dressing in order to customize the kits according to the relative amount of total fat content desired in the kit. Further, inclusion of a specific proportion of a low fat or no-fat or regular salad dressing

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and cooking composition to the packaged food would not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary. (Also see the rejection under 35 USC 112).

Regarding claim 8, Tomlinson teaches of at least one cooked ingredient as meat, cooked vegetables (Page 1, Paragraphs [0003 and 0008-0009]) as instantly claimed.

Regarding claim 9, Tomlinson teaches of salad leaves (Page 1, Paragraphs [0003 and 0008-0009]) as instantly claimed.

Regarding claim 10, Tomlinson teaches a packaged individual portions of food (a kit) for making salad containing lettuce, vegetables, cereals and /or meats (cooked ingredient) with salad dressing and sauce and cheese (Paragraphs [0002] to [0014]). Tomlinson also teaches of cereals and or meats (Paragraph [0003]) which would make the cooked ingredient. The cooked ingredient would inherently have to be cooked in a cooking composition. Also Tomlinson teaches of pastas with sauce, where the pasta is a cooked product which is further cooked in pasta sauce, i.e., a cooking composition as recited in claims 1 and 10. Thus Tomlinson teaches of cooked ingredient cooked in a cooking composition as recited in claim 10.

Regarding the fat content of the cooking composition, Tomlinson teaches of cheese and other cooking sauces or pastes but is silent as to the fat content of the cooking compositions. Bams teaches of water-in-oil-in-water emulsions that make cooking sauces etc. Bams teaches of sauces with 10-80% of oil as instantly claimed (Abstract). Based on the fat content of the dressing the rest of the flavoring content of the cooking composition would be 20-90% which would fall in the recited range of the applicant. Thus, Bams teaches that sauces or cooking compositions with the fat content in the instantly claimed range were known at the time of the invention. To select a sauce based on the fat/calorie content and based on the flavor/taste would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention. Therefore, one of ordinary skill would have been motivated to modify Tomlinson's kit

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and include a sauce with fat content in the range of 10% and up to 80% as taught by Bams in order to make the salad/meal kit as taught by Tomlinson more filling and substantial and also in order to provide the satiety value of a meal to the consumer. Further, inclusion of a cooking composition having a certain amount of fat ratio would not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary.

The salad dressing characteristics as recited in claim 10 are the same as recited in claim 1. Regarding step 2) of claim 10 as recited, Tomlinson teaches of pouring the salad dressing over the fruit vegetable or cereal product (Page 2, paragraph [0013]), thus the fruit vegetable or cereal product comes in contact with the dressing as instantly claimed. Thus step 2) of claim 10 is rejected for the same reasons of record as step 2) of claim 1, as discussed above.

Regarding the mixing of at least one cooked ingredient with at least one fruit, vegetable or cereal product as recited in step 3) of claim 10, Tomlinson teaches of lettuce based salad (vegetable) with pasta and sauce (cooked ingredient and cooking composition) along with vegetables and meats (Paragraph [0003] to [0014]) for method of mixing the ingredients with salad dressing.

Therefore claims 1-10 are unpatentable over Tomlinson in view of Erras and Burr.

B) Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over OVOFIT EIPRODUKTE GMBH (DE 20008456 U1 Abstract and figures).

Ovofit teaches of a convenient salad kit where the bowl of salad is sold with a cooked egg, i.e., a cooked ingredient which has been packaged separately from the salad. Ovofit also teaches a number of other blister packs containing other accompaniments as shown in figure 2. The reference also teaches of salad dressing package 15 (Figure 2 and description of figure 2 on pages 3-4 of the patent). Egg yolk being a part of egg is also part of the packaged food. Egg yolk is a high fat low moisture paste which adds flavor to the packaged food. The abstract of the reference does not provide details of the fat content of the salad dressing or sauce etc., however sauces and salad dressings

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with variable fat contents were known in the art at the time of the invention. Therefore it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to add a sauce and/or dressing with the salad based on the desired, fat content, nutritional value or calorie content of the salad. One of ordinary skill would have been motivated to do so in order to enhance the appeal of the packaged salad or food article to the intended clientele.

C) Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over GREISINGER N (DE 20104287 U1 Abstract and figures).

Greisinger teaches of a convenient meal or salad kit where the container of salad (Figures 1-3) is sold with meat, sausage etc., (cooked ingredient) and a number of other blister packs containing other accompaniments as shown in figure 2. The reference also teaches of mayonnaise (high fat, low moisture sauce or paste) in a suitable mixing ratio to make the recipe (Abstract). The abstract of the reference does not provide details of the fat content of the salad dressing or sauce etc., however mayonnaise is an emulsion and mayonnaise and sauces with variable fat contents were known in the art at the time of the invention. Therefore it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to add a sauce and/or dressing with the salad based on the desired, fat content, nutritional value or calorie content of the salad. Further the mayonnaise in the meal kit as taught by Greisinger is intended to be applied to other ingredients in the kit as recited. Therefore, one of ordinary skill in the art at the time of the invention would have been motivated to pack all the sauces or dressings and condiments separately in order to enhance the appeal of the packaged salad or food article to the intended clientele.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794

Jyoti Chawla
Examiner
Art Unit 1794